

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**HUNTINGTON DIVISION**

JAMES W. BERRY, SR.,

Petitioner,

v.

CIVIL ACTION NO. 3:07-00030

DAVID BALLARD, Warden,  
Mt. Olive Correctional Complex,

Respondent.

**ORDER**

This matter is before the Court on review of the Magistrate Judge's Findings and Recommendations that Petitioner's application for habeas corpus relief filed pursuant to 28 U.S.C. § 2254 be denied. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Court referred this matter to United States Magistrate Judge Maurice G. Taylor, Jr. for submission to the Court of his Findings and Recommendation. The Magistrate Judge submitted his report on December 5, 2008. Thereafter, on December 10, 2008, Petitioner submitted objections to the Findings and Recommendation. Upon *de novo* review of Petitioner's objections, the Court **ACCEPTS** and **INCORPORATES** herein the Findings and Recommendation of the Magistrate Judge and **DENIES** Petitioner's request for relief.

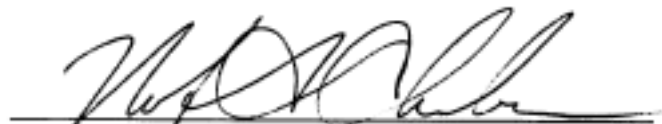
In the Findings and Recommendation, Judge Taylor found Petitioner's "Writ" and "Amended Writ of Prohibition" are actually habeas corpus petitions pursuant to 28 U.S.C. § 2254. The Magistrate Judge further found that Petitioner previously filed a habeas corpus petition pursuant to § 2254 in 2001, and he had not sought authorization to file a successive petition as provided by 28 U.S.C. § 2244(b)(3)(A). In his objections, Petitioner asserts, inter alia, he has a constitutional right to

file his action because he is illegally incarcerated. Upon *de novo* review, the Court agrees with the Magistrate Judge. The Court finds that Petitioner's "Writ" and "Amended Writ of Prohibition" are aptly characterized as a successive motion arising § 2254. As Petitioner has not received permission to file a successive motion, this Court may not consider Petitioner's claims.

Petitioner also objects to the Magistrate Judge's recommendation that a number of other motions be denied. *See Order* [Doc. No. 23]. The Court has reviewed the motions and agrees with the Magistrate Judge. Similarly, the Court **DENIES** Petitioner's more recent motions for restraining orders. [Doc. Nos. 24 & 28].

For the reasons set forth above, the Court **ACCEPTS** and **INCORPORATES** herein the Findings and Recommendation filed on December 5, 2008, and **DENIES** Petitioner's request for relief. The Court also **DENIES** Petitioner's motions for restraining orders. The Court **DIRECTS** the Clerk to send a copy of this Order to Magistrate Judge Taylor, all counsel of record, and any unrepresented parties.

ENTER: March 19, 2009

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', is written over a horizontal line.

ROBERT C. CHAMBERS  
UNITED STATES DISTRICT JUDGE